

*Opinion  
No. 1164*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

DISTRICT OF COLUMBIA REDEVELOPMENT  
LAND AGENCY and  
BRESLER AND REINER, INC.,

Petitioners

v.

Tax Docket 2447

DISTRICT OF COLUMBIA,

Respondent

DISTRICT OF COLUMBIA REDEVELOPMENT  
LAND AGENCY and  
BRESLER AND REINER, INC.,

Petitioners

v.

Tax Docket 2449

DISTRICT OF COLUMBIA,

Respondent

DISTRICT OF COLUMBIA REDEVELOPMENT  
LAND AGENCY and  
L'ENFANT PLAZA PROPERTIES, INC.,

Petitioners

v.

Tax Docket 2452

DISTRICT OF COLUMBIA,

Respondent

MEMORANDUM ORDER

These cases come before the Court on petitioners' motions for summary judgment. The motions are opposed by the respondent.

Docket 2447 is an appeal from a real property tax assessment for Fiscal Year 1977 made in the amount of

\$3,800,000. The property is legally described as Lot 79 in Square 542. The petitioners filed an appeal to the Board of Equalization and Review, hereinafter referred to as the Board, which entered a decision reducing the assessed valuation to \$3,000,000. Petitioners now seek to have the assessed valuation reduced to \$1,901,000. The petitioners have appealed both the value assigned to the improvements and that assigned to the land.

Docket 2449 is an appeal from a real property tax assessment made for Fiscal Year 1977 in the amount of \$3,700,000 on property which is legally described as Lot 50 in Square 499. The petitioners filed an appeal to the Board and that body sustained the assessed valuation. Petitioners seek to have the assessed valuation reduced to \$2,580,500. This appeal is also taken from the value assigned to both land and improvements.

Docket 2452 is an appeal from a real property tax assessment made for Fiscal Year 1977 in the amount of \$58,539,359 on property which is legally described as Lots 187 and 865 in Square 387 and Lot 61 in Square 435. The petitioners filed an appeal to the Board and that body sustained the assessments. Petitioners have only challenged the value assigned to the land in this case <sup>1/</sup> and they ask that the

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<sup>1/</sup> Both the prior law, D. C. Code 1973, §47-705, and the present law, D. C. Code 1973, §47-642(a) (Supp. V, 1978) provide that the assessment should set forth a separate valuation for the land and improvements. This Court has previously ruled that an appeal from a real property tax assessment is not invalid merely because the taxpayer challenges only the value assigned to the land or the improvements. District of Columbia Redevelopment Land Agency and Bresler & Reiner, Inc. v. District of Columbia, Tax Docket 2288, decided June 18, 1975.

assessed valuation of \$12,997,059 be reduced to \$6,016,512.70, a reduction which would reduce the total assessment set for both land and improvements to \$51,548,817.50.

The subject properties in all cases have been before the Court on appeals from real property tax assessments in Fiscal Years 1975 and 1976.

The property involved in Docket 2447 was the subject of a Fiscal Year 1975 appeal in Docket 2288. This Court entered an order on May 26, 1976, reducing the assessment to \$1,935,700 pursuant to its Memorandum Order and Trial Findings of April 30, 1976. The property described in Docket 2449 was the subject of a Fiscal Year 1975 appeal in Docket 2287 and on October 20, 1976, the Court set the value at \$2,720,500 pursuant to the Memorandum Order and Trial Findings dated September 20, 1976. The property described in Docket 2452 was the subject of a Fiscal Year 1975 appeal in Docket 2290 and on April 14, 1976 this Court set the valuation at \$6,016,517.70 (as to land only) pursuant to its Memorandum Order and Trial Findings filed on March 22, 1976.

The petitioners filed appeals from the real property tax assessments made against the properties for Fiscal Year 1976, those appeals being Dockets 2375 (2447), 2369 (2449), and 2370 (2452), respectively. All the subject properties are Group A properties as defined in Kelly v. District of Columbia, 102 Wash. L. Rptr. 2093 (D.C. Super. Ct. 1974) (Kelly I).<sup>2/</sup>

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<sup>2/</sup> The Court, in Kelly v. District of Columbia, 102 Wash. L. Rptr. 2093 (D.C. Super. Ct. 1974) (Kelly I) ruled that, since it was impossible for the District of Columbia to reassess

As such, there could be no reassessments of the properties for Fiscal Year 1976 and thus, the assessed values for that year remained the same as those for Fiscal Year 1975. See Kelly v. District of Columbia, 105 Wash. L. Rptr. 577 (D.C. Super. Ct. 1977) (Kelly II).

I

The petitioners allege in each case that the respondent has failed to reassess, or make a new assessment, on the respective properties for Fiscal Year 1977 and that, this being so, the assessed valuations for that year must remain the same as that assessed for Fiscal Year 1976.

Assessment, as used here, refers to the process of establishing the valuation to be assigned to the property for a given fiscal year as opposed to the procedural steps or billing process once the assessment has been made. In arriving at assessed valuation, the respondent, acting through its agents, considers a variety of matters, including those set forth in D. C. Code 1973, §47-641(a) (Supp. V, 1978) which provides in part:

§47-641. Assessment of real property-Regulations.

(a) . . . [S]ales information on similar types of real property, mortgage, or other financial considerations, reproduction costs less accrued depreciation because of age,

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2/ Cont'd.

all tax neighborhoods annually as required by statute, D. C. Code 1973, §47-702, that the City be divided into two groups with Group A properties being reassessed in 1975 and 1977 and Group B properties being reassessed in 1976 and 1978.

condition, and other factors, income earning potential (if any), zoning, and government-imposed restrictions. Assessments shall be based upon the source of information available to the Commissioner which may include actual view.

The assessed value is the "estimated market value of such property as of January 1 of the year preceding the tax year", here, January 1, 1976. Id. That assessed value, once established remains until another assessment is made.

"District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052, 1056 (D.C. App. 1977); D. C. Code 1973, §47-709; D. C. Code 1973, §47-646(g) (Supp. V 1978). Thus, if the petitioners can demonstrate to the satisfaction of the Court that the respondent did not undertake an actual reassessment of the properties for Fiscal Year 1977, they are entitled to summary judgment.<sup>3/</sup>

Respondent argues that the rule in Burlington should be limited to the facts of that case. This Court cannot agree. The holding in Burlington only follows the mandate of Congress, namely, that the assessment once established remains until another assessment is made. New assessments may be based upon a variety of factors but in order to have a new assessment there must be some affirmative action by the assessor. It also follows, that once the Superior Court has ruled respecting a particular assessment, a new assess-

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<sup>3/</sup> This would be the case except where there has been an intervening assessment under, for example, D. C. Code 1973, §§47-710 or 47-711.

ment for a new fiscal year cannot be "simply a routine repetition of the challenged . . . [prior] assessment".

375 A.2d at 1056, n. 8. (Matter in brackets this Court's.)

## II

The motions for summary judgment, which are captioned "Motion for Judgment", filed by the petitioners in Dockets 2447, 2449 and 2452, have attached thereto, a stipulation of facts entered into by the same parties in the tax appeals challenging the Fiscal Year 1975 and 1976 assessments, the assessment notices, and the assessment cards. Petitioners also filed a Statement of Material Facts Not in Dispute.

"[T]he Court may assume that the facts as claimed by the moving party are admitted to exist without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition to the motion". Super. Ct. Tax R. 3(a), Civ. R. 12-I(k). The Statements filed by the petitioners in each case assert that the notice of assessments contained a "routine repetition of the challenged Fiscal Year 1975 and 1976 assessments" (Statements, ¶7) and that there was no reassessment of the subject properties "utilizing updated sources of information" (Id. ¶9).

The respondent did not file statements in opposition, pursuant to Super. Ct. Civ. R. 12-I(k), which would controvert the facts set forth in the petitioners statements. It did file in each case, however, an affidavit in opposition to the motion, together with its formal opposition to the motion.

With respect to Dockets 2447 and 2449, the affidavits were signed by James P. Landry, a Senior Assessor, and stated generally that he had reviewed the "best information available during the year 1975" and arrived at the estimated market value. The affidavit filed in Docket 2452 and signed by Robert Klugel, also a Senior Assessor, was similar to those filed in Dockets 2447 and 2449. It is significant that the assessed valuations given by the assessors for Fiscal Year 1977 in each of the cases was the same as those original assessed valuations given in Fiscal Year 1975 and 1976 even though those prior assessments had later been reduced by the Superior Court in tax appeals filed for those years.

A hearing was held on these motions and the Court noted the very broad and general statements contained in the affidavits and advised the respondent that the affidavits failed to comply with Super. Ct. Civ. R. 56(e). The Court declined to grant judgment to the petitioners at that time but instead granted respondent additional time to file new affidavits which would satisfy Rule 56(e).

The respondent filed new affidavits in each case. It is those affidavits which are now before the Court.

### III

In affidavits filed in Dockets 2447 and 2449, Mr. Landry, the assessor assigned to those cases, sets forth in greater detail the nature of his duties and restates that he "reviewed the best information made available during the year 1975" (Landry Affidavit, ¶6) including the "assessment for prior

years and the files of the Board of Equalization and Review pertaining to these subject properties" (Id., ¶7). He finally states that "[h]aving reviewed the available data, I concluded that there was no basis to change my previous estimate of value recorded for prior years and I assigned that value for tax year 1977" (Id., ¶8). (Emphasis the Court's.) The affidavit filed in Docket 2452 and signed by Mr. Klugel, the assessor assigned to that case, contains the same representations (Klugel Affidavit, ¶¶6, 8 and 9) including the statement that he also concluded that there was no basis to change his previous estimate of value for Fiscal Years 1975 and 1976 and that he assigned the same value for Fiscal Year 1977.

These affidavits make clear that the assessors have merely adopted their prior determination without regard to the reductions ordered by the Court in the previous cases relating to Fiscal Years 1975 and 1976.

The matters submitted in support of the motion and the affidavits filed by the respondent and discussed above, make it clear that the respondent did not make new assessments as described in Section 47-641(a) on the subject properties. See Part I, supra. The affidavits contain no affirmative representations that new assessments were made for Fiscal Year 1977; in fact, they make it clear that the contrary is true. Each assessor has stated that he saw no reason to change his prior assessment and that he assigned the same value for Fiscal Year 1977. It would have been quite easy for the assessor to set forth the basis for the new assessment if one had actually been made.

IV

As was noted in Part I, supra, a final judgment by the Superior Court "on the lawful assessment of a particular property must be treated in the same manner as an equalized assessment from the Board, that is, it becomes the basis for taxation until a subsequent reassessment has been made according to law". District of Columbia v. Burlington Apartment House Co., supra, at 1056. This holding is consistent with the statute. D. C. Code 1973, §47-646(g) (Supp. V, 1978). To hold otherwise would amount to judicial subordination not only to the Board but to the assessor as well.

There are no genuine issues of material facts, the assessors have stated that they merely carried over the valuation determined by them for Fiscal Year 1976. Since the facts in the case establish that there were no reassessments in these cases subsequent to the decisions in Dockets 2375, 2369 and 2370, it follows that the assessed values for Fiscal Year 1977 remain the same as those for Fiscal Year 1976.

The statute effectively "forecloses continued reliance upon a figure judicially determined to be arbitrarily excessive, and the District may not validly contend that a new 'valuation according to law' has been satisfactorily achieved by the mere mailing of a later notice of assessment based upon the identical voided figure". District of Columbia v. Burlington Apartment House Co., supra, at 1057 - 1058.

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Two other motions filed in the case should be briefly mentioned. The petitioners in Docket 2452 requested the Court to strike the affidavit filed by Robert Klugel, based on their contention that it is inconsistent with his testimony given in Docket 2421, an injunction action presently on appeal. That motion is denied. The other motion is a motion which seeks to have the Court reconsider its decision granting the petitioners' motion for a protective order. Respondent sought to take the depositions of Heinz Abersfeller and Elwood H. Quesada, and the petitioners objected on the grounds that those depositions would not be relevant on the issue of the legality of the assessment while admitting that they would be relevant on the issue of the valuation assigned to the property. The respondent's contention that the discovery is consistent with Super. Ct. Civ. R. 56(f) is without merit since the only issue before the Court at this time is the question of the legality of the assessment. The legality of the assessment necessarily depends upon the actions of the assessor. The question is not whether the respondent can now ascertain information which may have supported a new assessment; the question is whether there was in fact a new assessment made on the respective properties. The motion for reconsideration is also denied.

O R D E R

The Court, after considering all the evidence and documents presented in these cases, finds that there are no genuine issues of material facts, and further finds, for the reasons set forth above, that the petitioners are now entitled to judgment as a matter of law. In view of the above it is hereby

ORDERED that the petitioner's motion to strike the affidavit of Robert Klugel in Docket 2452 is denied, and it is further

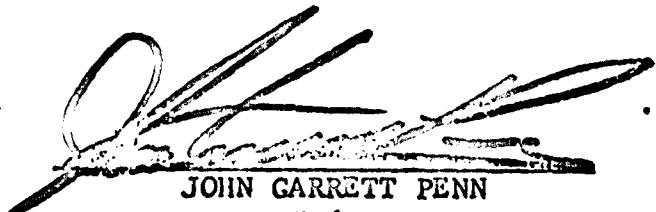
ORDERED that the petitioners' motions for summary judgment in Dockets 2447, 2449 and 2452 are granted, and it is further

ORDERED that the assessed values in each of those cases for Fiscal Year 1977 shall be the same as for Fiscal Year 1976, and it is further

ORDERED that petitioners shall submit proposed orders, consistent with this Memorandum Order within ten days of the date of this order, the original to the Court with a copy to respondents, and it is further

ORDERED that respondent will have five days thereafter in which to object to the form of the proposed order.

Dated: October 30, 1978

  
JOHN GARRETT PENN  
Judge

Gilbert Hahn, Jr., Esq.  
Attorney for Petitioners

Melvin J. Washington, Esq.  
Assistant Corporation Counsel  
Attorney for Respondents  
Copies mailed postage prepaid  
to parties indicated above on  
10-31, 1978  
42

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I

The petitioners allege in each case that the respondent has failed to reassess, or make a new assessment, on the respective properties for Fiscal Year 1977 and that, this being so, the assessed valuations for that year must remain the same as that assessed for Fiscal Year 1976.

Assessment, as used here, refers to the process of establishing the valuation to be assigned to the property for a given fiscal year as opposed to the procedural steps or billing process once the assessment has been made. In arriving at assessed valuation, the respondent, acting through its agents, considers a variety of matters, including those set forth in D. C. Code 1973, §47-641(a) (Supp. V, 1978) which provides in part:

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Respondent argues that the rule in Burlington should be limited to the facts of that case. This Court cannot agree. The holding in Burlington only follows the mandate of Congress, namely, that the assessment once established remains until another assessment is made. New assessments may be based upon a variety of factors but in order to have a new assessment there must be some affirmative action by the assessor. It also follows, that once the Superior Court has ruled respecting a particular assessment, a new assess-

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## II

The motions for summary judgment, which are captioned "Motion for Judgment", filed by the petitioners in Dockets 2447, 2449 and 2452, have attached thereto, a stipulation of facts entered into by the same parties in the tax appeals challenging the Fiscal Year 1975 and 1976 assessments, the assessment notices, and the assessment cards. Petitioners also filed a Statement of Material Facts Not in Dispute. "[T]he Court may assume that the facts as claimed by the moving party are admitted to exist without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition to the motion". Super. Ct. Tax R. 3(a), Civ. R. 12-I(k). The Statements filed by the petitioners in each case assert that the notice of assessments contained a "routine repetition of the challenged Fiscal Year 1975 and 1976 assessments" (Statements, ¶7) and that there was no reassessment of the subject properties "utilizing updated sources of information" (Id. ¶9).

The respondent did not file statements in opposition, pursuant to Super. Ct. Civ. R. 12-I(k), which would controvert the facts set forth in the petitioners statements. It did file in each case, however, an affidavit in opposition to the motion, together with its formal opposition to the motion.

With respect to Dockets 2447 and 2449, the affidavits were signed by James P. Landry, a Senior Assessor, and stated generally that he had reviewed the "best information available during the year 1975" and arrived at the estimated market value. The affidavit filed in Docket 2452 and signed by Robert Klugel, also a Senior Assessor, was similar to those filed in Dockets 2447 and 2449. It is significant that the assessed valuations given by the assessors for Fiscal Year 1977 in each of the cases was the same as those original assessed valuations given in Fiscal Year 1975 and 1976 even though those prior assessments had later been reduced by the Superior Court in tax appeals filed for those years.

A hearing was held on these motions and the Court noted the very broad and general statements contained in the affidavits and advised the respondent that the affidavits failed to comply with Super. Ct. Civ. R. 56(e). The Court declined to grant judgment to the petitioners at that time but instead granted respondent additional time to file new affidavits which would satisfy Rule 56(e).

The respondent filed new affidavits in each case. It is those affidavits which are now before the Court.

### III

In affidavits filed in Dockets 2447 and 2449, Mr. Landry, the assessor assigned to those cases, sets forth in greater detail the nature of his duties and restates that he "reviewed the best information made available during the year 1975" (Landry Affidavit, ¶6) including the "assessment for prior

years and the files of the Board of Equalization and Review pertaining to these subject properties" (Id., ¶7). He finally states that "[h]aving reviewed the available data, I concluded that there was no basis to change my previous estimate of value recorded for prior years and I assigned that value for tax year 1977" (Id., ¶8). (Emphasis the Court's.) The affidavit filed in Docket 2452 and signed by Mr. Klugel, the assessor assigned to that case, contains the same representations (Klugel Affidavit, ¶¶6, 8 and 9) including the statement that he also concluded that there was no basis to change his previous estimate of value for Fiscal Years 1975 and 1976 and that he assigned the same value for Fiscal Year 1977.

These affidavits make clear that the assessors have merely adopted their prior determination without regard to the reductions ordered by the Court in the previous cases relating to Fiscal Years 1975 and 1976.

The matters submitted in support of the motion and the affidavits filed by the respondent and discussed above, make it clear that the respondent did not make new assessments as described in Section 47-641(a) on the subject properties. See Part I, supra. The affidavits contain no affirmative representations that new assessments were made for Fiscal Year 1977; in fact, they make it clear that the contrary is true. Each assessor has stated that he saw no reason to change his prior assessment and that he assigned the same value for Fiscal Year 1977. It would have been quite easy for the assessor to set forth the basis for the new assessment if one had actually been made.

IV

As was noted in Part I, supra, a final judgment by the Superior Court "on the lawful assessment of a particular property must be treated in the same manner as an equalized assessment from the Board, that is, it becomes the basis for taxation until a subsequent reassessment has been made according to law". District of Columbia v. Burlington Apartment House Co., supra, at 1056. This holding is consistent with the statute. D. C. Code 1973, §47-646(g) (Supp. V, 1978). To hold otherwise would amount to judicial subordination not only to the Board but to the assessor as well.

There are no genuine issues of material facts, the assessors have stated that they merely carried over the valuation determined by them for Fiscal Year 1976. Since the facts in the case establish that there were no reassessments in these cases subsequent to the decisions in Dockets 2375, 2369 and 2370, it follows that the assessed values for Fiscal Year 1977 remain the same as those for Fiscal Year 1976.

The statute effectively "forecloses continued reliance upon a figure judicially determined to be arbitrarily excessive, and the District may not validly contend that a new 'valuation according to law' has been satisfactorily achieved by the mere mailing of a later notice of assessment based upon the identical voided figure". District of Columbia v. Burlington Apartment House Co., supra, at 1057 - 1058.

Two other motions filed in the case should be briefly mentioned. The petitioners in Docket 2452 requested the Court to strike the affidavit filed by Robert Klugel, based on their contention that it is inconsistent with his testimony given in Docket 2421, an injunction action presently on appeal. That motion is denied. The other motion is a motion which seeks to have the Court reconsider its decision granting the petitioners' motion for a protective order. Respondent sought to take the depositions of Heinz Abersfeller and Elwood H. Quesada, and the petitioners objected on the grounds that those depositions would not be relevant on the issue of the legality of the assessment while admitting that they would be relevant on the issue of the valuation assigned to the property. The respondent's contention that the discovery is consistent with Super. Ct. Civ. R. 56(f) is without merit since the only issue before the Court at this time is the question of the legality of the assessment. The legality of the assessment necessarily depends upon the actions of the assessor. The question is not whether the respondent can now ascertain information which may have supported a new assessment; the question is whether there was in fact a new assessment made on the respective properties. The motion for reconsideration is also denied.

O R D E R

The Court, after considering all the evidence and documents presented in these cases, finds that there are no genuine issues of material facts, and further finds, for the reasons set forth above, that the petitioners are now entitled to judgment as a matter of law. In view of the above it is hereby

ORDERED that the petitioner's motion to strike the affidavit of Robert Klugel in Docket 2452 is denied, and it is further

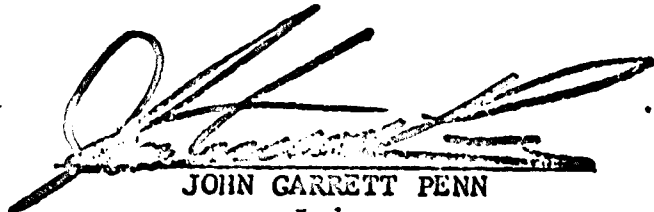
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ORDERED that the assessed values in each of those cases for Fiscal Year 1977 shall be the same as for Fiscal Year 1976, and it is further

ORDERED that petitioners shall submit proposed orders, consistent with this Memorandum Order within ten days of the date of this order, the original to the Court with a copy to respondents, and it is further

ORDERED that respondent will have five days thereafter in which to object to the form of the proposed order.

Dated: October 30, 1978

  
JOHN GARRETT PENN  
Judge

Gilbert Hahn, Jr., Esq.  
Attorney for Petitioners

Melvin J. Washington, Esq.  
Assistant Corporation Counsel  
Attorney for Respondents  
Copies mailed postage prepaid  
to parties indicated above on  
10-31, 1978  
45